ITA 39/2004
BEFORE
THE HON'BLE MR. JUSTICE D.BISWAS
THE HON'BLE SMT. JUSTICE A.HAZARIKA

Heard Mr U Bhuyan, learned counsel for the Revenue and Mr R.P. Agarwal, learned counsel for the respondent.

This appeal was admitted for hearing on the following substantial question of law:

Whether on the facts and in the circumstances of the case, the Tribunal was justified and correct in law in holding that in computing income assessable under the Income Tax Act, 1961 on account of profits and gains on business of production and sale of tea, depreciation actually allowed within the meaning of section 43(6) of the said Act should mean only that part of depreciation attributable to the taxable income before apportionment in accordance with Rule 8 of the Income Tax Rules, 1962?

The question raised in this appeal, as submitted by the learned counsel for the parties, came up before a Division Bench of this Court earlier in I.T.A Nos. 25, 26, 27 and 28 of 2004. The said appeals were disposed of by a common judgment dated 22.11.2006 answering the question in favour of the assessee and against the Revenue. The Division Bench relied upon the decision of the Apex Court in CIT Vs. Nandalal Bhandari Mills Ltd., (1966) 60 ITR 173; CIT Vs. Straw Products Ltd.,(1966) 60 ITR 156 (Supreme Court) and Madeva Upendra Sinai Vs. Union of India (1975) 98 ITR 209 (Supreme Court).

The interpretation of law as given by the Apex Court is quoted hereinbelow :-

The pivot of the definition of 'written down value' is the 'actual cost' of the assets. Where the asset was acquired and also used for the business in the previous year, such value would be its full actual cost and depreciation for that year would be allowed at the prescribed rate on such cost. In the subsequent year, depreciation would be calculated on the basis of actual cost less depreciation actually allowed. The key word in clause (b) is 'actually'. It is the antithesis of that which is merely speculative, theoretical or imaginary. 'Actually' contra-indicates a deeming construction of the word 'allowed' which it qualifies. The connotation of the phrase 'actually allowed' is thus limited to depreciation actually taken into account or granted and given effect to, i.e., debited by the Income-tax Officer against the incomings of the business in computing the taxable income of the assessees, it cannot be stretched to mean 'nationality allowed' or merely allowable on a national basis.

In view of the above interpretation, the appeal at hand is disposed of answering the question raised in favour of the assessee and against the Revenue.